IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/10/2004

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mrs. Justice R. BANUMATHI

Criminal Appeal No. 945 of 2002

Sekar,
Son of Rengasamy,
Ramakodangipatti,
Senthamangalam (via),
Namakkal District. .. Appellant/Accused.

-Vs-

State: represented by
Inspector of Police,
Erumapatti Police Station. .. Respondent/Complainant.

Criminal Appeal is filed under Section 374 of Code of Criminal Procedure, against judgement of Principal Sessions Judge, Salem, made in S.C.No. 214 of 1999 dated 02-02-2000.

For Appellant:- Mr. S. Panneerselvam.

For Respondent:-Mr.V.M.R. Rajendran, Additional Public Prosecutor.

:JUDGEMENT
(Judgement of the Court was delivered by P. Sathasivam, J.,)

Sekar, sole accused in Sessions Case No. 214 of 1999 on the file of Principal Sessions Judge, Salem, aggrieved by the conviction for offence under Section 302 I.P.C., and sentence of imprisonment for life, has filed the above appeal.

2. The prosecution case is briefly stated hereunder:
a) The accused Sekar of Kodangipatty married one Muthulakshmi, deceased in this case, 10 years back and they have two sons in the age group of 6 and 4 respectively. He is a wood cutter by profession. The accused used to poster the deceased demanding money for consumption of liquor. When money was refused by her, he used to tease her suspecting her fidelity. Hence, they

were not having cordial relationship. Few days prior to the occurrence, the deceased quarrelled with him. On 30-7-98 at about 9.00 P.M. the accused went to the house of one Thangaraju in his village where his wife Muthulakshmi was viewing Television. On seeing her inside the house of Thangaraju, he entered into a wordy quarrel with her and teased her suspecting her fidelity. His wife Muthulakshmi-deceased retorted to him. Enraged over this, the accused cut her neck with "koduval" which he was already in possession and the deceased succumbed to the injuries on the spot itself.

b) One Saroja, wife of the said Thangaraju raised an alarm and on hearing her voice, the accused sped away with koduval. The said Sarasu-P.W.1, who witnessed the occurrence, and was present in the scene of occurrence, went to Erumapatti Police Station along with her husband at 11 P.M. on 30-7-98 and made a statement about the incident to P.W.8, Sub Inspector of Police of that Police Station. The same was recorded by P.W.8. The complaint is Ex.P-1, which was signed by P.W.1 and attested by her husband Thangaraju. Then, P.W.8 registered a case in Crime No.370/98 under Section 302 I.P.C. and prepared Printed Express First Information Report-Ex.P-13 and sent it to Judicial Magistrate's Court and higher officials for further action.

c) P.W.9-the then Inspector of Police (incharge) of Erumapatti Police Station, on receipt of Ex.P-13, proceeded to the house of P.W.1 at 1 A.M. He prepared a rough sketch-Ex.P-14 between 1 and 1-30 A.M. and also prepared observation mahazar-Ex.P-2 in the presence of Jothimani and Ganesan. Around 1-30 A.M. he seized woven heir set of the deceased (M.O.6); blood-stained cement 'kaarai' (M.O.7); and sample 'kaarai' (M.O.8) under mahazar-Ex.P-3 in the presence of witnesses. He conducted inquest on the body of the deceased in the presence of witnesses-Saroja, Periakka, Selvaraj etc. The inquest report is Ex.P-15. He sent the dead body through P.W.6, Head Constable for post-mortem.

d) P.W.10, Inspector of Police, Erumapatti Police Station, took up further investigation on 2-8-98. He searched for the accused, but in vain. He got information on 14-10-98 stating that the accused surrendered before Judicial Magistrate, Kulithalai on 17-10-98. He filed a petition before the Judicial Magistrate, Namakkal on 23-10-98 to entrust the accused for police custody and he took the accused on 26-10-98. Then he took the accused to the scene of occurrence. He voluntarily gave a confessional statement. Pursuant to the statement, he took P.W.10 to Kattur Water Tank and produced a knife-M.O.1

which was recovered by P.W.10 by a mahazar in the presence of P.W.3Jothi and Aundi. After completing investigation, P.W.10 filed charge sheet under Section 302 I.P.C. on 30-11-98.

3. The prosecution has examined as many as 10 witnesses as P.Ws.1 to 10, marked Exs. P-1 to P-15 and M.Os.1 to 13 in support of their case. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances revealed from the evidence of prosecution witnesses, he denied the entire complicity of the offence and he did not examine any witness on his side. Accepting the prosecution case, the learned trial Judge convicted the accused and sentenced him to undergo life

imprisonment; hence the present appeal.

4. Heard Mr. S. Panneerselvam, learned counsel for the appellant and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for respondent.

5. After taking us through the relevant materials, learned counsel for the appellant at the foremost submitted that the earliest complaint-Ex.P-1 and the First Information Report-Ex.P-13 are not genuine documents in view of inconsistency relating to the time of the occurrence, registration of the same and the date and time when it reached the Court. He further contended that though the husband of P.W.1 accompanied her to the Police Station, for the reasons best known to the prosecution, he has not been examined. According to the counsel, there is no explanation for not sending M.O.1-koduval for chemical examination and the bed sheet which the accused had at the time of commission of the offence, has not been recovered. He further contended that the statement of P.Ws.2 to 5 were not sent to Court immediately and it reached the Court only on 23-3-2000, whereas the occurrence took place on 30-7-98. On the other hand, learned Additional Public Prosecutor would submit that there is no reason to disbelieve the version of P.W.1 who is an independent witness and the occurrence had taken place in her presence. He further contended that merely because there is minor variation in mentioning the time by P.W.8, on that account Exs. P-1 and P-13 cannot be rejected. According to him, since the accused surrendered only 14-10-98, nearly after 2 = months and M.O.1 was recovered thereafter, the same was not sent for chemical examination due to efflux of time. According to him, merely because the husband of P.W.1 was not examined, in the light of the availability of other evidence, particularly P.W.1, the learned trial Judge is right in accepting the case of the prosecution and convicting the accused. Hence the appeal is liable to be dismissed.

6. We have considered the rival submissions.

7. There is no reason to disbelieve the version of P.W.1 who is an independent witness not related to either the deceased or the accused. No doubt, she is a neighbour residing at Ramagodangipatti village. Her husband is an agriculturist and the accused and the deceased were living in rented house adjoining to the house of P.W.1. It is the categorical statement of P.W.1 that the accused and the deceased were living for the past 2 years and they often quarrelled with each other. On the fateful day i.e., on 30-7-98 the deceased after returning from her father's house, she came to her house to view T.V. around 9 P.M. At that time, the accused Sekar came there and quarrelled with her wife. She also suspected her fidelity and stabbed her with a hidden koduval on her neck. On seeing the act of the accused, P.W.1 raised an alarm. The accused sped away with koduval. On knowing that the deceased died on the spot, he went to Erumapatti Police Station along with her husband where she complained the act of the accused. Her statement was recorded by P.W.8. Ex. P-1 is the complaint. It is also her evidence that her husband Thangaraju who accompanied her, attested Ex. P-1. As said earlier, P.W.1 is an independent witness who is a neighbour to the house of the accused and the deceased. She narrated the mis-understanding between the

accused and the deceased for the last two years, frequent quarrel and the occurrence which had taken place in her house at 9 P.M. on 30-7-98. The observation mahazar refers all the materials including the presence of T.V etc. There is no reason to disbelieve her version. It is true that though her husband accompanied her to the Police Station and it was he who attested Ex. P-1 he was not examined in the Court in support of the prosecution case. Merely because her husband was not examined, there is no reason to disbelieve the version of P.W.1 who actually witnessed the occurrence. It is brought to our notice that P.W.1' s husband was examined by the Inspector of Police.

8. Though P.W.2 turned hostile, he has deposed in his chief examination that he is a resident of Kodangipatti and that on hearing a noise around 9 P.M. on 30-7-98, he came out from his house and saw the accused Sekar running from his house. P.W.3, Village Administrative Officer is an attestor to Ex.P-2 mahazar. He and one Ganesan attested Ex.P-2. M.O.1-koduval on the identification of the accused, was recovered under mahazar-Ex.P-4 in the presence of P.W.3 along with one Muthusamy Gounder. One P. Murugesan, a resident of the same village, examined as P.W.5, has also stated that after hearing a noise from Saroja's (P.W.1's) house, he rushed to her house and saw the accused Sekar running along with a koduval.

9. We have already referred to the categorical statement of P.W.1 that the accused stabbed the deceased on her neck with koduval. P.W.4, Dr. M. Arunagiri, who conducted post-mortem on the body of the deceased, opined that the death was due to cut injuries on the neck and spinal cord and other blood vessels of neck. In his chief examination he has stated that investigation officer. The evidence of P.W.1, who is the independent witness and the statement of P.Ws.2 and 5 regarding the fact that they had seen the accused running from the house of P.W.1 with koduval-M.O.1 and the evidence of the Doctor-P.W.4 and Ex.P-7 Post-mortem certificate clearly prove the case of the prosecution and we hold that it was the accused, who committed the murder of her wife by cutting her neck with M.O.1-koduval.

10. Learned counsel for the appellant would submit that there is no explanation for not sending M.O.1 koduval to chemical examination and also for non recovery of the bed sheet said to have been possessed by the accused at the time of the commission of the crime. As rightly pointed out by the learned Additional Public Prosecutor, though the occurrence had taken place on 30-7-98, the accused could not be arrested, but he surrendered before the Judicial Magistrate Court at Kulithalai only on 14-10-1998 and this was came to the knowledge of P.W.10-Investigating Officer only on 17-10-1998. Thereafter, on 23-10-98 he gave a requisition before the Magistrate to entrust the accused for police custody and the accused was entrusted to P. W.10 on 26-10-98. After taking him under police custody, the accused was taken to the house of Thangaraju on 26-10-98 and pursuant to his voluntary confession statement, M.O.1-koduval was recovered near a water tank in the presence of P.W.3 under Ex.P-4 mahazar. Inasmuch as M.O.1 was recovered only on 26-10-98, i.e., nearly after a period of 3 months, the blood-stain could not present in M.O.1 koduval and no purpose would be served in sending the same to chemical analysis. Merely because the bed sheet was not recovered from the accused, the prosecution theory cannot be belied.

11. Learned counsel for the appellant also pointed out that the statement of P.Ws.2 to 5 were not sent immediately to the Court and in fact, they were sent only on 23-3-2000 after quite a long time from the date of the occurrence. It is brought to our notice that the statement of P.W.1, who is an independent witness, was sent to Court on the next day of the occurrence i.e., on 31-7-98. Accordingly, we are of the view that merely because the statements of other witnesses-not eye witnesses to the occurrence were sent to Court belatedly is not a fatal to the prosecution.

12. With regard to the contention that Ex.P-1 complaint and Ex.P-13-First Information Report are not genuine documents, it is to be noted that the incident had occurred at 9 P.M. on 30-7-98 at P.W.1s house. On seeing the occurrence, P.W.1 along with her husband went to Erumapatti Police Station, which is 5 K.M. from the scene of occurrence, and gave a oral complaint, which was reduced to writing by P.W.8-Sub Inspector of Police in which P.W.1 put her signature and attested by her husband. It is true that there is little variation with regard to the time of the occurrence, reaching of P.W.1 to the Police Station and registering Ex.P-1-first information report etc. Ex.P-1 shows that the statement of P.W.1 was recorded by P.W.8 at 10 P.M. and it was registered in Crime No. 370/98 under Section 302 I.P.C. at 11 P.M. on 30-7-98. In cross-examination P.W.1 has stated that she went to the police station before 9 P.M. and at the time of recording the statement, it was 9-30 P.M. Since there is a specific reference in Ex.P-1 with regard to the time and date, namely, P.W.1s statement was recorded by P.W.8 at 10 P.M. and registered as Crime No.370/98 at 11 P.M., the entry made in Ex.P-1 is more probable and acceptable. It is not in dispute that P.W.1 is an illiterate lady and not conversant with the exact time. Learned counsel for the appellant pointed out the discrepancy in the statement of P.W.8 regarding the actual occurrence, the complaint made by P.W.1 and the registration of the crime as well as the reaching of the printed first information report in Court. On going through the evidence of P.W.8, the original of Ex.P-13, the endorsement made by the Judicial Officer regarding the receipt of the same, we are unable to appreciate the contention raised by the learned counsel for the appellant. In column (1) of Ex. P-13-printed first information report, the date and time of occurrence was mentioned as 30-7-98 at 9 P.M., and in column (2) the date and time of complaint was mentioned as 30-7-98 at 11 P.M. It also revealed that the distance between the house of Thangaraju at Ramakodangipatti is 5 K.M. It is true that in the first page of Ex.P-13, there is a correction, however, it denotes that the Magistrate had received the first information report at 1-30 A.M. on 31-7-98. In the last page of Ex. P-13, there is no correction and the Magistrate has specifically mentioned that the same was received by him at 1-30 A.M. on 31-7-98. The initial of the Magistrate and seal of the Court is also available in the first and last page of Ex.P-13. There is no reason to suspect or disbelieve the endorsement made by the learned Magistrate with regard to the time and date of receipt of Ex.P-13. Likewise, though P.W.8 recorded Ex.P-1 statement of P.W.1, he has admitted in cross-examination that the reference made at the end of Ex.P-13 that Statement recorded by me on 30-7-98 at 10 A.M.. is a mistake. It is relevant to note his evidence before the Court that .m.rh/M/1y; g[fhu; bgw;wJ ,ut[10 kzp vd;W vGjpa[s;nsd;/ m/rh/M/13y; fhiy 10 kzpf;F gjpt[bra;jjhf vGjpa[s;nsd;/ mJ jtWjyhf vGjpa[s;nsd;/////@

In the light of the above, there is no discrepancy in the time and date of the occurrence. Considering the fact that the occurrence had taken place around 9 P.M. on 30-7-98, complaint was made at 10 P.M. in a police station, which is a distance of 5--6 K.M. from the scene of occurrence and the same was registered at 11 P.M. and the printed first information report reached the Court at 1-30 A.M. on 31-7-98, we are of the view that first of all, there is no delay and consequently there is no discrepancy in mentioning the time and date of the occurrence either in Ex.P-1 or in Ex.P-13, as claimed by the learned counsel for the appellant. Accordingly, we reject the said contention. The scene of occurrence is the house of P.W.1. The observation mahazar-Ex.P-2, sketch-Ex.P-14, seizure mahazars-Exs.P-3 and P-4, Postmortem certificate-Ex.P-7 and the evidence of P.Ws.1 and 3 also strengthened the same. As rightly observed by the learned trial Judge, there is no material to show that the deceased had intimacy with the husband of P.W.1. When the accused was questioned under Section 313 Cr.P.C. on this aspect, except a bald denial, he has not stated anything on the same. Likewise, though a faint argument was advanced that it was P.W.1 who cut the deceased by Aruvamanai since the same was not noted in Ex.P-2-observation mahazar and the same also not substantiated by placing any material. The said contention is also liable to be rejected. P.W.4-Doctor who conducted post-mortem on the body of Muthulakshmi, has also ruled out the possibility of such injury by use of Aruvamanai. All these aspects have been appreciated by the learned trial Judge, who rightly found the accused guilty of the offence under Section 302 I.P.C.

13. Under these circumstances, we do not find any merit in the appeal; consequently, the same is dismissed.

R.B.
Index :- Yes
Internet:- Yes

To:-

1) The Principal Sessions Judge, Salem with records.
2) The Inspector of Police, Erumapatti Police Station.
3) The Public Prosecutor, High Court, Madras.
4) The Superintendent, Central Prison, Salem.
5) The District Collector, Salem.
6) The Director General of Police, Mylapore, Chennai-4.